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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No. 4744 of 2000

CORAM: Hon'ble Shri **S.R.Nayak,** Chief Justice &
Hon'ble Shri **D.R.Deshmukh,** J.

PETITIONERS : 1. Union of India, Through the Divisional Railway Manager, South Eastern Railway, Bilaspur (M.P.)

2. Senior Divisional Mechanical Engineer, South Eastern Railway, Bilaspur (M.P.)

Versus

RESPONDENTS: : 1. Naval Kishore, Loco Driver, (Retd), Purani Basti, Kalyanpur Road (Near Satyam Video), P.O. Sahdol, Distt. Sahdol (M.P.)

:. 2. Central Administrative Tribunal, Caravas building, near Railway Station, Jabalpur.

W.P.No. 638 of 2001

PETITIONERS : 1. Union of India, Through the Divisional Railway Manager, South Eastern Railway, Bilaspur (C.G.)

2. Divisional Mechanical Engineer, South Eastern Railway, Bilaspur (C.G.)

Versus

RESPONDENTS: : 1. R.K.Mishra, S/o late M.P.Mishra, Loco Drive, Sahdol (M.P.)

: 2. Central Administrative Tribunal, Caravas building, near Railway Station, Jabalpur.

Shri Vinay Harit, learned Sr. Counsel for Railways with Shri N.K.Shrivastava, Advocate

Shri Sanjay Verma, learned Counsel for respondent No.1 (in both the writ petitions)

ORAL ORDER
(Passed on 08.09.2006)

The following oral order of the Court was passed by **S. R. NAYAK, C.J.**

The contesting private respondent No.1 in each of these writ petitions are in the service of Railways as drivers. While working as loco

drivers they were served with charge sheet dated 13.11.1997 alleging that on 18.8.1997 while working as drivers they were driving the goods train more than the prescribed speed of 10 KM. per hour on the cross over point and due to this high speed, the train was derailed resulting in derailment of three wagons. The second petitioner, herein, namely Senior Divisional Mechanical Manager, South Eastern Railway, who is the disciplinary authority under the conduct regulations, not being satisfied with the explanation offered by the delinquent officials, ordered conduct of departmental enquiry against the respondents No.1 in each of these cases by appointing Shri R.P.Singh as Enquiry Officer. The Enquiry Officer, having conducted the enquiry, submitted his report recording a finding that the disciplinary authority has failed to prove that at the time of accident, the delinquent drivers were driving the goods train at a speed more than 10 KM. per hour. However, the disciplinary authority taking into account the finding recorded by the technical team, which conducted speed test, held the delinquent officials guilty of misconduct as alleged against them and on that basis, it has imposed penalty of reduction of pay by two stages for a period of two years with cumulative effect as disciplinary measure. The appeal preferred by the delinquent officials within the administration of Railways went in vain. That led to delinquent officials preferring Original Application No. 48 of 1999 and Original Application No.264 of 1999 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, for short the Tribunal. Before the Tribunal, on behalf of the delinquents, it was contended that in the report of the technical staff, which conducted the investigation into the cause of accident, it was held that the delinquents did not drive the train at a speed more than 10 KM. per hour, and therefore, holding the delinquents guilty of misconduct or imposing penalty was unjustified and illegal. Of course, in addition to that

ground, certain other grounds were also urged with regard to conduct of enquiry and denial of opportunity to defend themselves against the charge sheet. On the other hand, the applications were opposed by the petitioners herein by contending that the charged levelled against the delinquent officials have been satisfactorily proved and the finding recorded by the technical staff, which conducted the speed test, would show that the train was driven at a speed more than 10 KM. per hour. The Tribunal, having considered the rival contentions of the parties, held that the finding recorded by the technical staff after conducting speed test is not acceptable for the reason that by the time such test was conducted, there were improvements in the situations in the sense that the signal of cross over was changed and sign was repaired at the time of trial. What weighed with the Tribunal not to give much importance to the finding recorded by the technical staff, which conducted speed test after the aforesaid improvements and changing, is the fact that inter-technical staff, immediately after the accident before initiation of the departmental enquiry had conducted a thorough investigation into the cause of the accident and had recorded the finding that the derailment was due to engineering defect. What is recorded in that report is a fully supported in the course of regular enquiry also by the witnesses of the disciplinary authority themselves. The Tribunal in para 5.3 of the order has pointed out that the witnesses of the disciplinary authority in their depositions have stated that there have been number of derailments over the cross over point in question in the past also and according to them, these accidents have taken place because of defective tracks. The reason given by the Tribunal not to give much importance to the finding recorded by the technical staff, which conducted the speed test after a considerable lapse of time and after the changes brought about, as noted above, cannot be condemned

as perverse. If that report is eschewed, what remains on the file would fully support that the defence of the delinquent officials that the accident had taken place not due to high speed in driving the train but due to engineering/technical defects in the tracks.

2. It is needless to state that it is the onus of the disciplinary authority to satisfactorily establish the charge framed against the delinquents by adducing substantive acceptable legal evidence. As pointed out supra, the disciplinary authority has utterly failed to bring home the charge of misconduct alleged against the delinquent officials by adducing substantive, satisfactory and acceptable evidence. In that view of the matter, we cannot take any exception to the impugned order passed by the Tribunal.

3. The writ petitions are devoid of merit and they are accordingly dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge